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3 County Attorney
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Attorneys for STATE OF ARIZONA

IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

V1300CR201080049

**STATE'S SUPPLEMENT
TO RESPONSE TO DEFENDANT'S
MOTION FOR MISTRIAL BASED ON
INTENTIONAL AND WILLFUL
SUPPRESSION OF EXCULPATORY
EVIDENCE**

(The Honorable Warren Darrow)

The State of Arizona, through undersigned counsel, respectfully files this Supplement to its Response to Defendant's Motion for Mistrial Based on Intentional and Willful Suppression of Exculpatory Evidence.

Attached as Exhibit A are the prosecutors' and staff notes disclosed to Defendant on October 6, 2010, in the State's 13th Supplemental Disclosure. These notes were disclosed to Defendant pursuant to a Court Order and are the notes taken during the December 14, 2009 meeting between members of the Yavapai County Attorney's Office, the Yavapai County Sheriff's Office, and the Medical Examiners.

These notes reflecting "heat stroke, hyperthermia, organ system failure, oxygen deprivation, carbon dioxide" and "cause of death = heat stroke/ hyperthermia, oxygen

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S. LANDINO

DEPUTY CLERK

Office of the Yavapai County Attorney

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Prescott, AZ 86301

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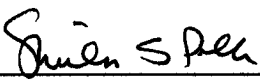
1 deprivation" are further evidence that Defendant was fully aware of the issue of carbon dioxide
2 in the sweat lodge.

3 Furthermore, the interview conducted by Defendant's attorneys Truc Do and Luis Li of
4 Dr. Mosley, the medical examiner who performed the autopsy of Lizbeth Neuman, contains a
5 discussion about oxygen deprivation and elevated carbon dioxide levels. In that interview, Dr.
6 Mosley specifically told Defendant's attorneys that he could not eliminate oxygen deprivation as
7 a differential diagnosis, but that hyperthermia was the overriding cause of the suffocation
8 element. *See Exhibit B, page 33 of Transcript of Interview of Dr. Mosley, 5/21/10 (Trial exhibit*
9 *683.)*

10
11 The State respectfully requests the Court consider this additional evidence in determining
12 that Defendant was fully aware of the issues addressed in the email from Rick Haddow.

13 RESPECTFULLY submitted this 12th day of April, 2011.

14 SHEILA SULLIVAN POLK
15 YAVAPAI COUNTY ATTORNEY

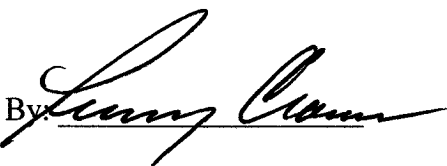
16
17 By 
18 COUNTY ATTORNEY

19 COPIES of the foregoing emailed this
20 12th day of April, 2011:

21 Hon. Warren Darrow
22 Dtroxell@courts.az.gov

23 Thomas Kelly
24 tkkelly@thomaskellypc.com

25 Truc Do
26 Tru.Do@mto.com

By 

COPIES of the foregoing delivered this
12th day of April, 2011, to

Thomas Kelly

Truc Do
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

By 

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3 Attorneys for the STATE OF ARIZONA

4 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

5 IN AND FOR THE COUNTY OF YAVAPAI

6 STATE OF ARIZONA,

7 Plaintiff,

8 v.

9 JAMES ARTHUR RAY,

10 Defendant.

CAUSE NO. V1300CR201080049

Division PTB

**THIRTEENTH SUPPLEMENTAL
DISCLOSURE BY STATE OF MATTERS
RELATING TO GUILT, INNOCENCE,
OR PUNISHMENT**

11 Pursuant to Rule 15.1(a) and (b) of the Arizona Rules of Criminal Procedure, the
12 Yavapai County Attorney's Office hereby files the following material and information within
13 its possession or control relative to guilt, innocence, or punishment, and further notifies the
14 defendant(s) that said material and information is either typed on this form, is attached hereto
15 and incorporated herein by reference (**) or is available to the defendant(s) for examination
16 and reproduction at the office of the Yavapai County Attorney (****) or has been previously
17 provided to defendant (**), or to be disclosed upon receipt (****)

18 1. The names and addresses of all persons whom the prosecution will call as
19 witnesses in the case-in chief and or rebuttal, together with their relevant written or recorded
20 statements:

21 2. All statements of the defendant and of any person who will be tried with him:

22 3. All then existing original and supplemental reports prepared by a law
23 enforcement agency in connection with the particular crime with which the defendant is charged.

24 4. The names and addresses of experts who have personally examined the
25 defendant's or any evidence in this case, together with the results of physical examinations
26 and of scientific tests, experiments of comparisons, including all written reports or
statements made by them in connection with this case:

5. A list of all papers, documents, photographs or tangible objects which the
prosecution will use at trial or which were obtained from or purportedly belong to the
defendant(s):

Office of the Yavapai County Attorney

255 S. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

6. A list of all prior felony convictions of the defendant which the prosecution will use at trial:

7. A list of all prior acts of the defendant(s) which the prosecution will use to prove motive, intent, or knowledge or otherwise use at trial:

8. All material or information which tends to mitigate or negate the defendant's guilt as to the offense charged or which would tend to reduce his punishment, including all prior felony convictions or witnesses whom the prosecution expects to call at trial:

9. The results of any electronic surveillance of any conversations to which the defendant was a party, or of his business or residence:

10. All search warrants that have been executed in connection with this case:

11. The identity of any informant(s) involved in this case (if the defendant is entitled to know this fact under Rule 15.4(b) (2).


12. Other:

- Notes by Sheila Polk taken at pre-indictment meeting on December 14, 2009, as ordered by Court to produce in Minute Entry dated September 20, 2010. Bates No. 004954.

- Notes taken by Kathy Durrer at pre-indictment meeting on December 14, 2009, as ordered by Court to produce in Minute Entry dated September 20, 2010. Bates No. 004955-4956.

DATED this 6th day of October, 2010.

SHEILA SULLIVAN POLK
YAVAPAI COUNTY ATTORNEY



COPY of the foregoing mailed
October 6, 2010 to:

Thomas Kelly

Truc Do
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

By: 

Cause of death -

- negative toxicology
- natural disease

- heat stroke
- hyperthermia
- organ system failure
- oxygen deprivation
- carbon dioxide toxicity

intent was to code these people to point

they have altered state.

cause of death =

heat stroke /

hyperthermia

oxygen deprivation

Manner

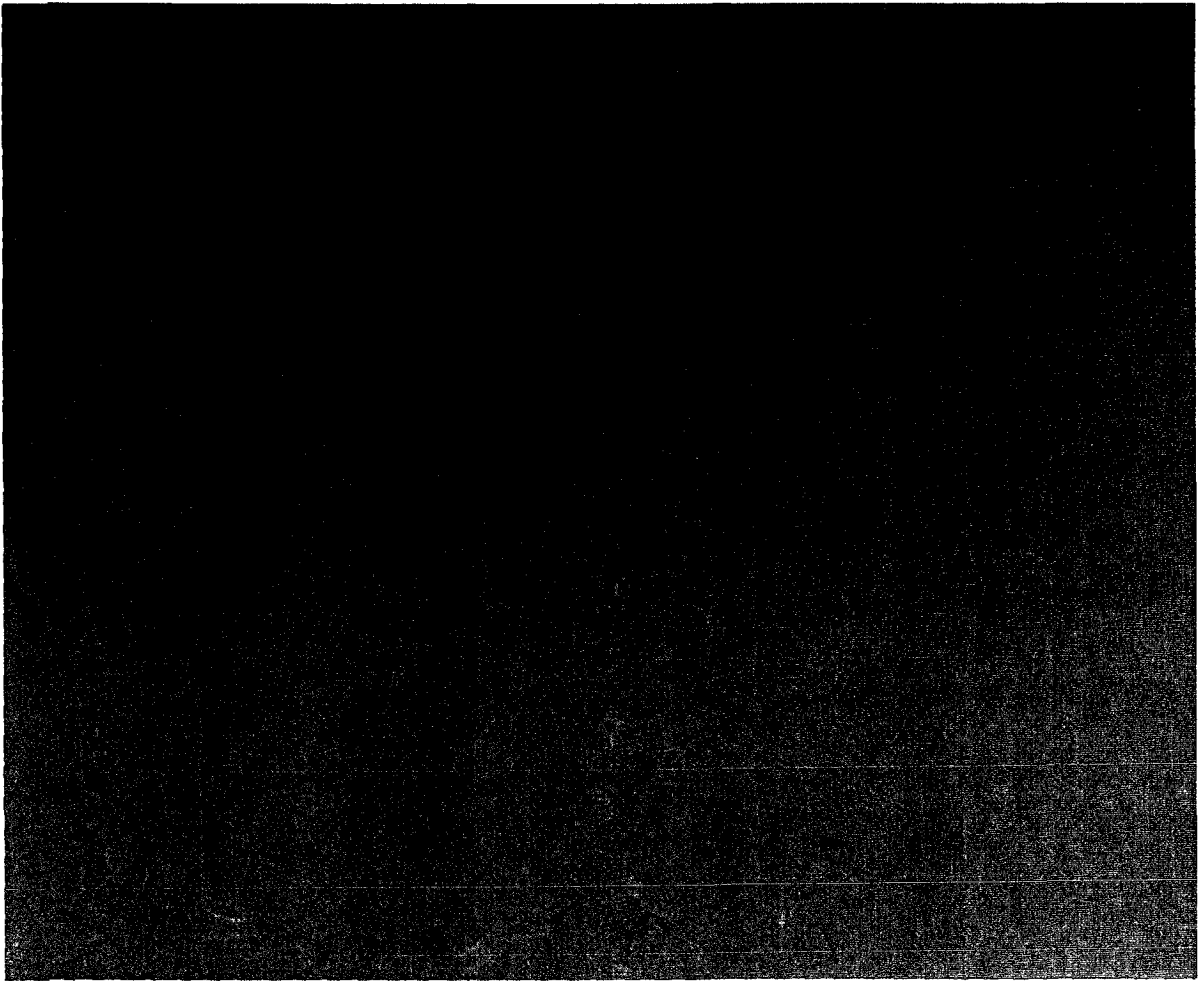
Death @ hands of another -

Lynx - accidental

Sandalwood / Sage issues -

Loe Neuman - hyperthermia oxygen dep.
accident

Heat stroke / accidental



No intent -

Rule it accident. don't believe he intentionally meant to do it -

negligent

fails to perceive a substantial

bound by first classification
suicide natural homicide accident undetermined

def of accident - inference

'Cook these people' until they have an altered stat

irresponsible to go ~~accident~~ ^{accident} ~~undetermined~~

Homicide -
death by hands of another - ME definition

undetermined or accidental - ME from review
of records - didn't do autopsies

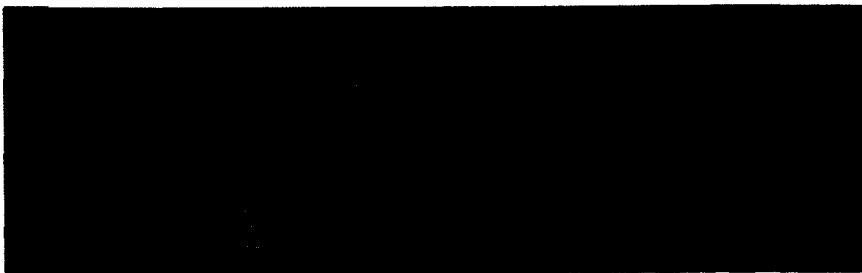
hyperthermia - oxygen deprivation -
carbon dioxide -

sandlewood - toxic effect -
home building logs - outside air -

No one smelled anything
mult organ failure

Newman - Hyperthermia Oxygen deprivation
manner accident - Didn't block door didn't threaten

How do death occur -



Bob - leave it pending until investigation

⇒ Must come to conclusion independent of legal
process

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SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

TRANSCRIPT OF INTERVIEW

Witness: Dr. A.L. Mosley

By: Truc T. Do and Luis Li

Present: Bill Hughes & Det. Ross Diskin

Date: 05/21/10

Location: Yavapai County Atty's Office

Length: 1:22:17 minutes

1 DO: Did you discuss a differential diagnosis with Dr. Lyon or Dr. Fischione?
2 MOSLEY: Sort of in the sense of oxygen deprivation being so ... suffocation, and
3 you know this may have well have occurred, so we're all ... the oxygen in
4 the air we breathe may seem like it varies widely from Flagstaff to
5 Phoenix but it doesn't really. It's always at 21 percent or something like
6 that. But you drop the oxygen content to where you just say 15 percent,
7 that can kill ya if you stay in that room. CO2 goes up. So if the air, the
8 oxygen content of the air is what is changing substantially or dramatically,
9 well ... I just contradicted myself there. I was just saying that it doesn't
10 have to change much.
11 LI: A few percent is a substantial and important?
12 MOSLEY: Yeah.
13 LI: Okay, so good, go ahead and finish the thought.
14 MOSLEY: It brings an annulment of suffocation and the cause of death as opposed to
15 pure hyperthermia, but I think in consideration of that, I still felt that
16 hyperthermia was the overriding cause of the suffocation element, while it
17 may be present I have no way to prove it.
18 DO: And then that oxygen deprivation possibility was discussed and eliminated
19 by all three?
20 MOSLEY: Well, eliminated, I don't know if I could eliminate it. I still can't
21 eliminate because I don't ... I just felt I couldn't prove it and what I could
22 prove. I wouldn't feel I could prove so to speak with the circumstantial
23 evidence.
24 DO: And I just got a few last questions and then we can conclude this interview
25 and I may have already asked this. Did you review Dr. Lyon or Dr.
26 Fischione, or Dr. Lyon's report on either of the other two deceased before,
27 reaching ...
28 MOSLEY: No, I wish I had. I would like to see them. But I hadn't. I haven't.